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Third Party Plaintiff, Richard K. Diamond
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re
12 SMB GROUP, INC.,
13 Debtor.

Case No. 2:11-bk-30426-BR

Chapter 11

14 SMB GROUP, INC.,
15 Plaintiff,

Adv. No. 2:13-ap-01020-BR

16 vs.

**DECLARATION OF STEVEN J. SCHWARTZ IN SUPPORT OF REQUEST
FOR CLERK TO ENTER DEFAULT
UNDER LBR 7055-1(a)**

17 RICHARD K. DIAMOND,
18 Defendant.

[No Hearing Required]

19
20 RICHARD K. DIAMOND,
21 Counterclaimant,

22 vs.

23 SMB GROUP, INC. as debtor and debtor-in-
24 possession,
25 Counter-defendant.
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1 RICHARD K. DIAMOND,

2 Third-Party Plaintiff,

3 vs.

4 IN CHUL SHIN, aka JEFF SHIN, an
5 individual, UNION TRIM, INC.; USB
6 GROUP, INC.; ALPHA SEWING
7 MACHINE,

8 Third-Party Defendants.

9 I, Steven J. Schwartz, declare and state as follows:

10 1. I am an attorney duly licensed and entitled to practice before this Court and am a
11 partner with the law firm of Danning, Gill, Diamond & Kollitz, LLP, attorneys of record for
12 Richard K. Diamond ("Diamond"), as Third-Party Plaintiff in the above-captioned adversary
13 proceeding (the "Adversary Proceeding"). I make this declaration in support of Diamond's
14 *Request for Clerk to Enter Default under LBR 7055-1(a)* filed contemporaneously herewith. The
15 facts set forth herein are true of my own personal knowledge, and if called upon to testify thereto, I
16 could and would competently do so under oath.

17 2. On February 7, 2013, I filed, on behalf of Diamond, Diamond's *Third Party*
18 *Complaint for Money Damages Based on Indemnity; Fraud; Negligence; Abuse of Process; and*
19 *Monetary Sanctions for Violation of 28 U.S.C. § 1927 and Federal Rule of Bankruptcy Procedure*
20 *9011* (the "Complaint") (Docket No. 5).

21 3. I caused Defendants, In Chul Shin, aka Jeff Shin; Union Trim, Inc.; and USB
22 Group, Inc. to be served with the Summons and Complaint in this Adversary Proceeding by first
23 class U.S. Mail postage prepaid on February 11, 2013.

24 4. Pursuant to the Summons, the deadline for the Defendant, Union Trim, Inc., to file
25 and serve a written response to the Complaint was March 11, 2013.

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1 5. As of the date of this declaration, the electronic proceedings docket in this
2 Adversary Proceeding reflects that a response to the Complaint has not been filed, and I have not
3 been served with a response to the Complaint.

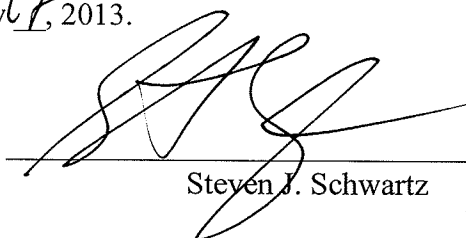
4 6. Accordingly, because Defendant, Union Trim, Inc., has failed to plead or otherwise
5 defend as provided by Rule 7055 the Federal Rules of Bankruptcy Procedure, which makes Rule 55
6 of the Federal Rules of Civil Procedure applicable in this Adversary Proceeding, I have
7 contemporaneously filed the *Request for Clerk to Enter Default under Local Bankruptcy Rule*
8 *7055-1(a)* against Defendant, Union Trim, Inc., and I believe that entry of default against Union
9 Trim, Inc. in this Adversary Proceeding is appropriate.

10 7. I am informed and believe, and on that basis allege, that the defaulting Defendant,
11 Union Trim, Inc., is neither an infant nor an incompetent person, nor is Union Trim, Inc. currently
12 on active duty in the armed forces of the United States of America.

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14 I declare, under penalty of perjury and subject to the laws of the United States of America,
15 that the foregoing is true and correct to the best of my knowledge, information and belief.

16 Executed at Los Angeles, California on May 17, 2013.

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Steven J. Schwartz

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1900 Avenue of the Stars, 11th Floor, Los Angeles, CA 90067-4402.

A true and correct copy of the foregoing document entitled (*specify*): DECLARATION OF STEVEN J. SCHWARTZ IN SUPPORT OF REQUEST FOR CLERK TO ENTER DEFAULT UNDER LBR 7055-1(a) will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On May 20, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Attorney for Third-Party Plaintiff Richard Diamond: Howard Kollitz HKollitz@DGDK.Com, DanningGill@gmail.com

Attorney for Plaintiff SMB Group, Inc.: Kevin S Lacey klacey@lddl.com,

kevinlacey@tilemlaw.com; malissamurguia@tilemlaw.com; dianachau@tilemlaw.com; joanfidelson@tilemlaw.com

Attorney for In Chul Shin aka Jeff Shin: David B Lally davidlallylaw@gmail.com

Attorney for Third-Party Plaintiff Richard Diamond: Steven J Schwartz sschwartz@dgdk.com, DanningGill@gmail.com

Attorney for Plaintiff SMB Group, Inc.: David A Tilem davidtilem@tilemlaw.com,
malissamurguia@tilemlaw.com; dianachau@tilemlaw.com; joanfidelson@tilemlaw.com

United States Trustee (LA) ustregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL: On May 20, 2013, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Third-Party Defendant

USB Group, Inc.

c/o In Chul Shin, Registered Agent for Service of Process
2635 S. Main Street, #B
Los Angeles, CA 90007

Third-Party Defendant

Union Trim, Inc.

c/o Henry Soon Kim, Registered Agent for Service of Process
3921 Wilshire Blvd., #417
Los Angeles, CA 90010

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on May 20, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Hand Delivery (ALSSI) – To be delivered on 5/21/13

The Hon. Barry Russell, U.S. Bankruptcy Court, 255 E. Temple St., Bin outside of Suite 1660, Los Angeles, CA 90012

☐ Service information continued on attached page.


I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 20, 2013

Date

Cheryl Caldwell

Printed Name


Signature